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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/848,933	05/19/2004	Michael Lewis	LLP127US	5697
51092 7590 09/25/2009 ESCHWEILER & ASSOCIATES LLC 629 EUCLID AVENUE, SUITE 1000 NATIONAL CITY BUILDING CLEVELAND, OH 44114			EXAMINER TRAN, KHANH C	
			ART UNIT 2611	PAPER NUMBER
			NOTIFICATION DATE 09/25/2009	DELIVERY MODE ELECTRONIC

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

Docketing@eschweilerlaw.com

**Advisory Action  
Before the Filing of an Appeal Brief**

Application No.

10/848,933

Applicant(s)

LEWIS, MICHAEL

Examiner

KHANH C. TRAN

Art Unit

2611

**--The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**

THE REPLY FILED 09 September 2009 FAILS TO PLACE THIS APPLICATION IN CONDITION FOR ALLOWANCE.

1. ☒ The reply was filed after a final rejection, but prior to or on the same day as filing a Notice of Appeal. To avoid abandonment of this application, applicant must timely file one of the following replies: (1) an amendment, affidavit, or other evidence, which places the application in condition for allowance; (2) a Notice of Appeal (with appeal fee) in compliance with 37 CFR 41.31; or (3) a Request for Continued Examination (RCE) in compliance with 37 CFR 1.114. The reply must be filed within one of the following time periods:

- a) ☐ The period for reply expires \_\_\_\_\_ months from the mailing date of the final rejection.  
b) ☒ The period for reply expires on: (1) the mailing date of this Advisory Action, or (2) the date set forth in the final rejection, whichever is later. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of the final rejection.

Examiner Note: If box 1 is checked, check either box (a) or (b). ONLY CHECK BOX (b) WHEN THE FIRST REPLY WAS FILED WITHIN TWO MONTHS OF THE FINAL REJECTION. See MPEP 706.07(f).

Extensions of time may be obtained under 37 CFR 1.136(a). The date on which the petition under 37 CFR 1.136(a) and the appropriate extension fee have been filed is the date for purposes of determining the period of extension and the corresponding amount of the fee. The appropriate extension fee under 37 CFR 1.17(a) is calculated from: (1) the expiration date of the shortened statutory period for reply originally set in the final Office action; or (2) as set forth in (b) above, if checked. Any reply received by the Office later than three months after the mailing date of the final rejection, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**NOTICE OF APPEAL**

2. ☐ The Notice of Appeal was filed on \_\_\_\_\_. A brief in compliance with 37 CFR 41.37 must be filed within two months of the date of filing the Notice of Appeal (37 CFR 41.37(a)), or any extension thereof (37 CFR 41.37(e)), to avoid dismissal of the appeal. Since a Notice of Appeal has been filed, any reply must be filed within the time period set forth in 37 CFR 41.37(a).

**AMENDMENTS**

3. ☐ The proposed amendment(s) filed after a final rejection, but prior to the date of filing a brief, will not be entered because  
(a) ☐ They raise new issues that would require further consideration and/or search (see NOTE below);  
(b) ☐ They raise the issue of new matter (see NOTE below);  
(c) ☐ They are not deemed to place the application in better form for appeal by materially reducing or simplifying the issues for appeal; and/or  
(d) ☐ They present additional claims without canceling a corresponding number of finally rejected claims.

NOTE: \_\_\_\_\_. (See 37 CFR 1.116 and 41.33(a)).

4. ☐ The amendments are not in compliance with 37 CFR 1.121. See attached Notice of Non-Compliant Amendment (PTOL-324).  
5. ☐ Applicant's reply has overcome the following rejection(s): \_\_\_\_\_.  
6. ☐ Newly proposed or amended claim(s) \_\_\_\_\_ would be allowable if submitted in a separate, timely filed amendment canceling the non-allowable claim(s).  
7. ☒ For purposes of appeal, the proposed amendment(s): a) ☐ will not be entered, or b) ☐ will be entered and an explanation of how the new or amended claims would be rejected is provided below or appended.  
The status of the claim(s) is (or will be) as follows:  
Claim(s) allowed: 2-9.  
Claim(s) objected to: 12-18.  
Claim(s) rejected: 1, 10, 11 and 19-22.  
Claim(s) withdrawn from consideration: \_\_\_\_\_.

**AFFIDAVIT OR OTHER EVIDENCE**

8. ☐ The affidavit or other evidence filed after a final action, but before or on the date of filing a Notice of Appeal will not be entered because applicant failed to provide a showing of good and sufficient reasons why the affidavit or other evidence is necessary and was not earlier presented. See 37 CFR 1.116(e).  
9. ☐ The affidavit or other evidence filed after the date of filing a Notice of Appeal, but prior to the date of filing a brief, will not be entered because the affidavit or other evidence failed to overcome all rejections under appeal and/or appellant fails to provide a showing of good and sufficient reasons why it is necessary and was not earlier presented. See 37 CFR 41.33(d)(1).  
10. ☐ The affidavit or other evidence is entered. An explanation of the status of the claims after entry is below or attached.

**REQUEST FOR RECONSIDERATION/OTHER**

11. ☒ The request for reconsideration has been considered but does NOT place the application in condition for allowance because:  
See Continuation Sheet.  
12. ☐ Note the attached Information *Disclosure Statement*(s). (PTO/SB/08) Paper No(s). \_\_\_\_\_.  
13. ☐ Other: \_\_\_\_\_.

/KHANH C. TRAN/  
Primary Examiner, Art Unit 2611

Continuation of 11. does NOT place the application in condition for allowance because: In response to Applicants' arguments on pages 9-11 of the Remarks that the pilot-based phase estimation block 24 of Fig. 6 is not operable to gradually switch between pilot-based phase and frequency tracking to data-based frequency tracking, as recited in claims 1, 1 O, 11, 20 and 21... the pilot-based phase estimation block 24 is not connected with data-based phase and frequency tracking, and thus, can not be equated with the control system of claim 1 that is connected to the first and second system gradually switching between pilot-based phase and frequency tracking to data-based frequency tracking ... There is no teaching or suggestion in APA that a control system gradually switches from the pilot-based phase and frequency tracking to the data-based phase and frequency tracking, as recited in claim 1... However the APA does not provide a description of how a manner of switching affects the error properties, and consequently, the APA provides no teaching that would motivate one skilled in the art to correct the error properties by switching in a gradual manner.

The Examiner's position is that FIG. 6 prior art and FIG. 8 of the pending application are similar with only one difference. FIG. 6 prior art utilized a pilot-based phase estimation block 24 while FIG. 8 of the pending application employs a control system. In view of that, the pilot-based phase estimation block 24 is connected with data-based frequency tracking {Emphasis added}, contrary with Applicants' recited arguments. Furthermore, the pilot-based phase estimation block 24 gradually switch from pilot-based phase and frequency tracking to data-based phase and frequency tracking iteratively {Emphasis added}, i.e. via demodulation block 14, remodulation block 20, frequency estimation block 18, frequency correction block 10. As recited in the Final rejection and is repeated here, the pilot-based phase estimation block continues to estimate the phase error and residual frequency, for each iteration, until obtaining reliable data estimates near the beginning of the transmission and gradually (via the iteration process as discussed above) switch over to data-based tracking for the remainder of the transmission as disclosed in paragraph [0024] of the original disclosure. Since the claim language of claims 1, 10-11 and 19-22 does not specifically provide the manner how the claimed control system gradually switches (e.g. broadly claimed) from the pilot-based phase and frequency tracking to the data-based phase and frequency tracking, FIG. 6 prior art would render the claims obvious as discussed in the Final rejection.